

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL STAMP NO. 29409 OF 1992
WITH
CIVIL APPLICATION NO. 824 OF 1993

Shri and ors. Madhukar Shivram Mahadik
VS. ..Appellants

1. Manik Shrikisan Kasant
and ors. ..Respondents

Mr. Prathamesh Bhargude i/by Mr. Anil Anturkar for appellants.

Mr. N.V. Walawalkar for respondent nos. 1 to 4.

CORAM: B.H. MARLAPALLE, J.

Date : June 13, 2007.

P.C.:

1. This second appeal arises from the decree passed by the learned 1st Joint Civil Judge, J.D., Satara on 27/2/1987 and confirmed by the Lower Appellate Court on 30/7/1992 by dismissing Regular Civil Appeal Nos. 258 and 411 of 1987. Thus, this second appeal has been waiting for admission for the last about 15 years.

2. Two different suits i.e. RCS No. 210/1971 and RCS No. 94 of 1977 were filed by the same plaintiffs.

The first suit was filed for declaration, possession and consequential reliefs of injunction in respect of the suit properties i.e. 1/2 share of southern side of plot bearing CTS No.180/1 and 180-A/1 situated at Ravivar Peth, Satara and originally owned by the defendant nos.2 to 4. The same was sold by defendant nos.2 and 3 to the plaintiffs on 3/12/1969 for a sum of Rs.1500/-. In addition, the plaintiffs had purchased 800 sq.ft. out of the remaining plot from one Rajak and were put in possession on 17/10/1969 and this transaction was subsequently confirmed by a sale deed dated 3/12/1969. They claimed that the defendant no.1 had encroached upon their share of the property to the extent of 350 sq.ft. RCS No. 94 of 1977 was filed for permanent injunction restraining the defendants from encroaching upon the plaintiffs' properties or constructing any portion of the house over the said property out of plot bearing CTS No.180/1 and 180-A/1 situated at Ravivar Peth.

3. The trial court by a common judgment and decree dated 27/2/1987 decreed the first suit i.e. RCS No.210/71 and dismissed the second suit i.e. RCS No.94/77. It declared that the plaintiffs were the

owners of 1/2 portion from southern side amdeasuring
 1934 sq.ft. out of CTS No.180/1 and 180-A/1 and
 consequently defendant no.1 was restrained by an order
 of permanent injunction from obstructing the
 possession of the plaintiffs and he was further
 directed to demolish the structure standing over the
 encroached portion to the extent of 279 ft. - equal
 to 26.5 sq.mtr. and to handover the vacant possession
 of the same to the plaintiffs within a period of three
 months. The original defendant no.1 challenged the
 common decree by filing two separate appeals i.e.
 Regular Civil Appeal Nos.258/87 and 411/87 and as
 noted earlier the learned III Addl. District Judge,
 Satara was pleased to dismiss both the appeals.
 Mr.Walawalkar the learned Senior Counsel appearing for
 the original plaintiffs has pointed out by placing on
 record a certified copy of the order passed in Second
 Appeal No. 332 of 1994 that the decree passed in RCS
 No.210/1971 and confirmed in Reg. Civil Appeal No.258
 of 1987 was under challenge and the said second appeal
 came to be dismissed on 15/6/1994.

4. Under these circumstances, what remains is the
 decree passed in RCS No.94/77 and Second Appeal

No.332/94 was filed by the present appellant no.1. As noted earlier, RCS No.94/77 was dismissed by the trial court and, therefore, nothing further survives in this second appeal for challenge.

5. The appeal is dismissed as infructuous.

6. Civil Application No.824 of 1993 does not survive and the same shall stand disposed as such.

(B.H. Marlapalle,J.)